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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/704,808	11/02/2000	John F. Finley	1585.01	4313

28635 7590 11/21/2003  
JOE D. CALHOUN  
319 PRESIDENT CLINTON AVENUE  
SUITE 205  
LITTLE ROCK, AR 72201

EXAMINER

MILLER, BENA B

ART UNIT PAPER NUMBER

3712

DATE MAILED: 11/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

*Supplemental*  
**Office Action Summary**

Application No.

09/704,808

Applicant(s)

FINLEY, JOHN F.

Examiner

Bena Miller

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 8-21 is/are pending in the application.
- 4a) Of the above claim(s) 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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*Supplemental*

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 and 8-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 11, it is unclear as to whether or not applicant is intending to claim the combination of the housing device and the frame or the subcombination of the housing device, only. This in turn is, because while line 1 of the claims appears to indicate that applicant's intention is to claim only the housing device, other claims dependent thereon recite limitations which are dependent on the frame (Note claim 1, line 5, for example only). In this Office Action, the examiner presumes that the applicant's intention is to prosecute the subcombination of the housing device, in order that the claims are given their broadest reasonable interpretation. Accordingly, all additional limitations that are dependent on the frame are not considered further structurally limiting with respect to the claimed device. Furthermore, it is unclear if the frame is the same as the "plurality of essentially interchangeable frames" as recited in line 2 of claims 1 and 11. If so, it is unclear if applicant is claiming at least one of the frames, more than one frame or a combination thereof.

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Regarding claim 1, applicant recites in line 2, "one or more reeds in a caller"; however, it is not clear if the caller is separate from the housing or if the housing is the caller.

Regarding claims 2 and 12, there is lack of antecedent basis for the limitation "the contour of the user's palate".

Regarding claims 4 and 14, there is lack of antecedent basis for the limitation "the end of each opposing arm of the caller frame".

Regarding claim 6, there is lack of antecedent basis for the limitation "the caller-housing combination".

Claim 8 is vague and indefinite because the claim is dependent on a claim that has been canceled (Note: applicant has canceled claim 7). Therefore, the scope of the claim cannot be determined with substantial certainty.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 8-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacobsen.

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Regarding claims 1 and 11, Jacobsen teaches in figures 1-7 a housing device comprising one reed (22) and an essentially planar elastomeric material defining an essentially planar cavity (col. 2, lines 63-col. 3, line 10).

Regarding claims 2 and 12, Jacobsen further teaches an upper surface (fig.1), an essentially ventral aspect (14), an essentially dorsal aspect (17a, 17b), a dorsal perimeter (16, fig. 7), a buttress (25) and a flap essentially integrally extending dorsally from said buttress (15).

Regarding claims 3 and 13, Jacobsen further teaches a pair of essentially horseshoe-shaped planar halves foldedly joined at their ends, upper plane and lower plane defining a cavity and at least one resiliently-flexible reed in figures 1 and 7.

Regarding claims 4 and 14, as best as understood, Jacobsen further teaches an endstop (see marked copy figure 7).

The examiner considers the limitations of claim 8 to be inherent in the device of Jacobsen.

***Allowable Subject Matter***

Claims 5 and 5-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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***Response to Arguments***

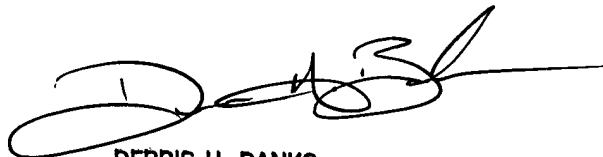
Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Piper teaches a diaphragm-type game caller with removable spacer. Piper teaches a diaphragm-type game caller. Forbes an animal call and methods of and apparatus for making same. Mueller teaches a diaphragm game call with tone modifying slits. Sears teaches an adjustable diaphragm game calls.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643. The examiner can normally be reached on Monday-Friday.

bbm  
November 6, 2003

A handwritten signature in black ink, appearing to read 'D. Banks', with a long horizontal line extending to the right.

DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700



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EXAMINER	
B. Miller	
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DATE MAILED:

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents and Trademarks

Responsive to Communication Filed 05/16/03

The enclosed is a correct copy of a reference relating to the last Office action. The correction is indicated below.

THE PERIOD FOR RESPONSE OF 3 MONTHS SET IN SAID OFFICE ACTION IS  
RESTARTED TO BEGIN WITH THE DATE OF THIS LETTER.

☒ Part 1 - Correct Reference Citation

OFFICE

Supplemental Action attached hereto.

by

Examiner

☐ Part 2 - Correct Reference Furnished:

by

Reference Order Center

enc.

DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700